

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7976 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

SAVITABEN ISHWARBHAI VAGHELA

Versus

SUPERINTENDENT

Appearance:

1. Special Civil Application No. 7976 of 1998
MR CB DASTOOR for Petitioner No. 1-2
MR PD BHATE, LD AGP for Respondent No. 1-2
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CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 17/02/2004

ORAL JUDGEMENT

The grievance of the petitioners is that though they have been discharging the services as Part Time Sweepers as

well as Part Time Peon [Patawala/Aaya] in the Government hospital at Kubernagar, Ahmedabad, their services are not regularized till today. It is stated that they are required to discharge their duty daily even on holidays and Sundays and they were required to work for more than 7 to 8 hours per day. They have been paid lumpsum amount towards salary, which could be seen from the receipts which are annexed as Annexure " A" to the petition. Both the petitioners have been paid Rs.690/= per month. It is further submitted that the petitioners were, continuously from May 1996 to April 1998, discharging their duties without any break of a single day. However, their request to regularize their services is not granted. It is their say that they have been exploited by the respondents and considering that they have been serving faithfully since their initial appointment in the year 1992, they ought to have been made permanent. It is their grievance that one Govindbhai Punjabhai Makwana, who was appointed as Peon on the permanent basis in the year 1996 at Kubernagar Government hospital after obtaining his name from the employment exchange, but the case of the petitioners at that time was not considered inspite of the fact that they had been rendering the services since long. It is their grievance that the said Govindbhai Punjabhai Makwana has now expired and by way of amendment to this petition, death certificate has been produced, but the respondents have not considered them to be appointed on that post. i.e. the post of Peon on permanent basis. In these set of facts, it has been prayed that they be appointed in class IV as permanent employees of the respondents and they be paid all the benefits as per the pay scale i.e. which is available for the permanent employee to the class IV.

2 The petition is contested by the respondents by filing affidavit in reply. Their main contention is that the petitioners were mainly part timers and, therefore, they were not given appointment on regular basis. They were in the nature of daily wager/casual labourer but in the appointment letter by mistake they were shown as part timers. It was averred that as per the decision of the Finance Department, published in the notification dated 18.6.1991, they have been paid Rs.20/= per day and not a lumpsum amount as contended by the petitioners. It was averred by the respondents that since the appointment of the petitioners were not made by the proper authority/competent authority, their appointment was also not regular and considering the fact they were merely daily wager, they could not have been made permanent in the employment of the respondents.

3. Mr.Dastoor, learned advocate appearing for the petitioners has submitted that considering the fact that the petitioners have been discharging their duty since 1992 for daily 6 to 7 hours , which fact has not been controverted by the respondents, their services are required to be regularized and they are required to be absorbed on the permanent post. He has further submitted that on account of demise of Govindbhai Punjabhai Makwana post of peon has been lying vacant where at least one of the petitioner could be accommodated.

4. As against this, Mr.Bhate, learned Assistant Government Pleader has submitted that the petitioners cannot be made permanent because their initial appointment was not by the competent authority/proper authority. He has further submitted that the petitioners were not working continuously but as and when their services were required they were engaged on daily wage basis as can be seen from the documents produced by the petitioners at Annexure B.

5. Having gone through the record of the petition as well as having considered the rival submissions, it appears that the petitioners have been rendering services as part timers Sweeper/Aaya in the maternity sub centre at Kubernagar. It also appears that they have been paid lumpsum amount of Rs.690/= per month towards their wages. Thus, the averment made by the respondents in the affidavit that they were paid RS.20/= per day as daily wage does not seem to be an accurate statement. It also appears that more or less, they have been continuously rendering their services to the respondents right from 1992. However, the petitioners have not produced the letters of appointments nor they have produced any other documents by which it can be seen that on what terms and conditions they have been working with the respondents and whether their appointment was made by the proper/competent authority. Anyhow, considering the fact that they have served the respondents for long period, their case is required to be considered synthetically for appointment on permanent basis. It is time and again said by the Apex Court that person cannot be continued on temporary or ad hoc basis for long and his service is required to be regularized and further that minimum pay scale of the class in which he was placed be made available to him. Mr.Dastoor points out that the services of the petitioner no.2. were terminated verbally by the respondents in the year 1999 i.e. after the admission of the petition but the petitioner no.1 still continuing in the employment. I am, therefore, of

the view that the following directions will meet the end of justice.

Petitioners shall make representation to the respondent no.1. within one month from the date of this judgment. Petitioner no.2 can also make the representation in respect of the order of termination of her services as well as for regularization of her services, if she is reinstated in the employment by the respondents on her original post. The respondents shall consider the representation sympathetically and particularly keeping in view the observations made in the judgment and if permissible and if it is found that the petitioners are eligible for such appointment on permanent basis, be given to them. It can also be clarified that if it is needed, age relaxation can also be made by the respondents for this purpose. The decision on the representation shall be taken by the respondent no.1 as early as possible but not later than 15th May 2004. With the aforesaid directions, the petition is disposed of accordingly. Rule is discharged.

[AKSHAY H.MEHTA, J]

SNS.